

STATE OF MICHIGAN  
COURT OF APPEALS

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PIONEER STATE MUTUAL INSURANCE  
COMPANY,

Plaintiff-Appellant,

v

LARRY WAGNER,

Defendant,

and

DUANE WOODWYK, Individually and as  
Personal Representative of the Estate of TRAVIS  
SCOTT WOODWYK, Deceased,

Defendant-Appellee

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UNPUBLISHED  
March 22, 2007

No. 273080  
Barry Circuit Court  
LC No. 05-000485-CK

Before: Servitto, P.J., and Talbot and Schuette, JJ.

SERVITTO, J. (*dissenting*)

I respectfully dissent.

Plaintiff's homeowner's policy excludes from coverage bodily injury or property damage:

a. resulting from any intentional or criminal act or omission which is expected or intended by any **insured** to cause any harm. This exclusion applies whether or not any **insured**:

(1) intended or expected the result of his or her act or omission so long as the resulting injury or damage was a natural consequence of the intended act or omission.

The submitted facts establish that Wagner retrieved a shotgun, and then loaded the gun in front of Woodwyk to scare him. Wagner then closed the gun, pulled back the hammer, and pointed the loaded gun at Woodwyk. Wagner's finger was obviously either on or very near the trigger, as he pulled the trigger while trying to catch his falling cell phone. I recognize Wagner's

testimony that he accidentally hit the trigger. Nevertheless, Wagner intentionally loaded the gun and intentionally pointed it at Woodwyk, intending to scare him. It could be said, then, that Wagner intended to cause Woodwyk emotional harm.

Whether the actual resulting harm was a “natural consequence” of the intentional act is reviewed from an objective standpoint. *Auto-Owners Ins Co v Harrington*, 455 Mich 377, 383; 565 NW2d 839 (1997). A “natural consequence” of an act need not be an *expected* consequence of the act.

Here, even though Wagner may not have intended the exact result of his actions, a natural consequence of pointing a loaded gun at another with one’s finger on or near the trigger, while engaging in a balancing act (here, balancing a telephone between the shoulder and head), would be that the trigger is pulled and the weapon is fired at the person at whom the weapon is pointed. I would thus reverse.

/s/ Deborah A. Servitto